IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 6984 of 2001 (S/S)
(Old No. 4379 of 1993)

Sri Sanjay Bhakuni
S/o Shri Diwan Singh Bhakuni
R/o Dharm Niwas, Village Kheera Kot,
P.O. Chanoda, District Almora

……. Petitioner

Versus

1. The State
   Through the Agricultural Secretary
2. The Upper Krishi Nideshak, Parvatiya,
   Pauri Garhwal.
3. The Up Krishi Nideshak
   Bhumi Sanrakshan, Almora.
4. The Bhumi Sanrakshan Adhikari
   Almora.

…… Respondents

Mr. M. C. Kandpal, Sr. Advocate assisted by Mr. S.S. Chaudhary, Advocate for the petitioner.
Mr. H. M Raturi and N.P. Sah, Standing Counsel for the state.

Hon. Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has challenged the order dated 6th February 1993, whereby the services of the petitioner were terminated from the post of Assistant Soil Conservation Inspector.

2) Heard learned counsel for the parties and perused the counter affidavit and rejoinder affidavit filed by the parties.

3) Brief Facts of the case, as narrated in the writ petition, are that petitioner was appointed on 1st February 1988, on daily wages as Assistant Soil Conservation Inspector. He remained posted in Tea Nursery, Matela, District Almora. Thereafter, vide order dated 4th July 1989, the petitioner was appointed on ad-hoc basis on the aforesaid post in the pay scale of Rs. 400-615 (revised pay scale Rs. 975-1640). Petitioner's case is that he worked with honesty and dedication to the full satisfaction of his superiors till the impugned order was passed. It is further stated in the writ petition that petitioner is qualified for the post, as he holds degrees in B.Sc. (Agriculture) and has got the necessary training and experience. Suddenly, after the period of 3 ½ years, his services were terminated vide impugned order dated 6th February 1993. Alleging that no show cause notice was given, nor the petitioner was heard, before his service were terminated, this writ petition is filed before the Allahabad High Court in the year 1993, from where it has been transferred to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal. (vide order dated 29.04.1993, the operation of the impugned order of termination was stayed, by the Allahabad High Court.)

4) A counter affidavit has been filed on behalf of the respondents in which it is admitted that the petitioner has served for 3½ years on the post of Assistant Soil Conservation Inspector. But it is alleged that this service was ad-hoc in nature, and he was not a regularly appointed employee. Defending the impugned order it is stated that

the impugned order of termination suffers from no illegality.

5) Learned Senior Counsel appearing on behalf of the petitioner argued that after three years of ad-hoc service, the petitioner's serviceS were terminated instead of considering his case for regularization, under Rule 4 of The U.P. Regularisation of Ad-hoc appointments (on posts outside the purview of the Public Service Commission) Rules, 1979. However, on perusal of said Rule, this Court finds that the cut off date was 01.01.1977, for considering the regularization. In this connection, learned Senior Counsel appearing for the petitioner drew attention of this Court to Rule 4 of The Uttaranchal Regularisation of Ad-hoc appointments (on posts outside the purview of the Public Service Commission) Rules, 2002, which reads as under:

> ***"4. Regularisation of ad-hoc appointments-***
>
> *(1) Any person who:-*
>
> *(i) was directly appointed on ad-hoc basis before June 30, 1998 and is continuing in service on the date of commencement of these rules;*
>
> *(ii) possessed requisite qualification prescribed for regular appointment at the time of ad-hoc appointment; and*
>
> *(iii) has completed or as the case may be, after he has completed three years service as such, shall be considered for regular appointment*

in permanent or temporary vacancy, as may be available, on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant rules or orders.

(2) In making regular appointment under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1) the appointing authority shall constitute a Selection Committee.

(4) The appointing authority shall prepare an eligibility list of the candidates arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with the character rolls and such other records of the candidates as may be

considered necessary to assess their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4)

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the appointing authority."

6) Learned Senior Advocate appearing for the petitioner states that since the petitioner is continuously serving in the respondent department, as such, he is now entitled for regularization, under Rule 4, mentioned above. In this connection, it is stated that the petitioner not only completed more than three years, but also he is a qualified person for the aforesaid post. Considering the fact that the petitioner is in service for almost 18 years, now, it is desirable to dispose of this writ petition by directing the respondents to consider the case of the petitioner under aforesaid Rule.

7) Accordingly, the writ petition is disposes of with the direction that the petitioner shall make representation within a period of fifteen days to the respondents, who shall consider the petitioner's case under Rule 4 of the Uttaranchal Regularisation of Ad-hoc Appointments (on the posts outside the purview of the Public Service Commission) Rules, 2002, and take a decision in the matter, within a period of three months from the date

certified copy of this order is produced before concerned authority. The impugned order challenged in this writ petition shall remain stayed from today till said period expires. No order as to costs.

(Prafulla C. Pant, J)

Dt. September 27, 2007
H. Negi